



INTERNAL REVENUE SERVICE  
**Attn: Mandatory Review, MC 4920 DAL**  
**1100 Commerce St.**  
**Dallas, TX 75242**

501.06-00

**Date: February 23, 2012**

Number: **201222050**  
Release Date: 6/1/2012

LEGEND

ORG - Organization name  
XX - Date Address - address

**Employer Identification Number:**  
**Person to Contact/ID Number:**  
**Contact Number:**

ORG  
ADDRESS

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Dear :

In a determination letter dated November 20XX, you were held to be exempt from Federal income tax under section 501(c)(6) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(6) of the Code. Accordingly, your exemption from Federal income tax is revoked effective January 1, 20XX. This is a final adverse determination letter with regard to your status under section 501(c)(6) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On January 7, 20XX, you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(6) of the Code.

You will therefore be required to file Form[s] 1120, U.S. Corporation Income Tax Return, for the year[s] ended December 31, 20XX with the Ogden Service Center. For future periods, you are required to file Form 1120 with the appropriate service center indicated in the instructions for the return.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

**Internal Revenue Service**

**Department of the Treasury**

Date: December 30, 2011

ORG  
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018-A, *Consent to Proposed Adverse Action*. We will then send you a final letter revoking your exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing  
Director, EO Examinations

Enclosures:  
Publication 892  
Publication 3498  
Form 6018-A  
Report of Examination  
Envelope

Form <b>886A</b>	Department of the Treasury - Internal Revenue Service <b>Explanation of Items</b>	Schedule No. or Exhibit
Name of Taxpayer  ORG, EIN		Year/Period Ended  12/31/20XX

**LEGEND**

ORG - Organization name      XX - Date      State - state      DIR-1, DIR-2 & Dir-3  
 - 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> DIR      RA-1 & RA-2 - 1<sup>st</sup> & 2<sup>nd</sup> RA      City - city      Event -  
 event      CO-1 through CO-13 - 1<sup>st</sup> through 13<sup>th</sup> COMPANY

**ISSUES:**

Whether the ORG (the Organization) is organized and operated exclusively for exempt purposes within the meaning of Internal Revenue Code (IRC) § 501(c)(6) and the Regulations. Whether the Organization qualifies for exemption under IRC § 501(c)(6).

**FACTS:**

**Organizational Information**

The Organization was incorporated in the State of State on November 27, 20XX. Article 4 of the Articles of Incorporation provides:

*No part of the net earnings of the corporation shall inure to the benefit of any member or private shareholder.*

Article 5 of the Articles of Incorporation provides:

*The corporation shall have no members as defined in section 5056 of the State Corporations code. The corporation may refer to persons with whom it has associated in carrying out its activities as "members," but no such reference shall constitute anyone as a member within the meaning of section 5056 of the State Corporation Code.*

The Organization filed the Certificate of Amendment of Articles of Incorporation with the State of State on May 28, 20XX. However, the Secretary of the State requested further revising before the amendment is approved and executed.

**Bylaws**

The Bylaws, adopted on April 13, 20XX, state that the organization has three Directors as detailed below:

- DIR-1s Association of Northern State
- DIR-2s Association of Southern State
- DIR-3, IRC § 501(c)(3) organization

**Form 1024- Application for Tax Exempt Status**

The Organization submitted Form 1024, *Application for Recognition of Exemption under Section 501(c)(6) of the Internal Revenue Code*, to the Internal Revenue Service (the Service) on January 2, 20XX. The Organization elected to apply for exemption via

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Form 1024 under *IRC § 501(c)(6)*. Part II of the Form 1024, Activities and Operational Information provides:

*ORG has been organized to facilitate the formation of an event (known as EVENT) that promotes a positive image of motorcycling in general, and the DIR-2 and products in particular. The intent is to bring many motorcycling activities together for a common interest. That common interest will combine the existing DIR-3 Charity event with multifaceted motorcycle racing presence, CO-13 product vendors and exhibitions, state dealer association and promotional involvements and other motorcycle interest features. The goal is to create an exciting interesting State multi-day signature motorcycling event that will feature, among other things, all of the above activities...*

Per Form 1024, no other activities conducted in addition to the EVENT annual event (the Event). The two principal financial supporters of the Organization were the DIR-3 and the DIR-1. A third financial supporter, the DIR-2, would no longer be affiliated with the Event or the Organization as of January 20XX.

### **Operational Information**

On February 4, 20XX, the Service began the examination of the Form 990, *Return of Organization Exempt from Income Tax*, filed for the year ending December 31, 20XX. The examination included the review of the relative books and records and the interview of the responsible officers of the Organization.

The Organization reported the following revenue and expenses per books:

	<u>Revenue</u>
Gross Income: Fundraising Event (the Event):	
Less: Direct Expenses:	
<b>TOTAL REVENUE</b>	
	<u>Expenses</u>
Fees: Legal:	
Marketing PR Fee	
Management Fee	
Entertainment Fee	
Insurance	
Vendor Fee Credit Card Merchant, Transfer between Bank Accounts,	
Miscellaneous	
Foundation / Postage	
<b>TOTAL EXPENSES</b>	

As part of that examination, an initial Information Document Request (IDR1) was issued on February 4, 20XX to request documentation for the purpose of determining whether

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the organization operated in accordance with requirements set forth *under IRC 501§ (c)(6)*.

On March 24, 20XX an interview was conducted with RA-1, Tax Return Preparer, and RA-2, the Exempt Organization Administrator, who was authorized to represent and bind the Organization in tax matters. The Organization provided the following documentation in response to the IDR1.

- Articles of Incorporation
- Bylaws
- Amendment to Articles of Incorporation
- Determination Letter of exemption under (IRC) § 501(c)(6)
- Form 1024, Application for Recognition of Exemption under Section 501(a)
- Board minutes of year of 20XX
- Bank statements for year 20XX
- Summary of Accounts for January 1 to December 31, 20XX
- Receipts and disbursement journal for January 1 through December 31, 20XX
- Flyer and advertising materials for EVENT event from October 24 to 26, 20XX

On March 25, 20XX IDR2 was issued to request the items listed on IDR #1 and remained outstanding.

On April 28, 20XX the Organization provided the following documents in response to IDR2.

- Supporting documents for revenue and expense items
- Contracts signed by ORG, CO-1, and CO-2
- Facility Use License Contract signed between the Organization and CO-3

Based on the interview and the records provided, the Organization performed the following activities and operations during the year under examination:

#### **1. Annual EVENT Event**

The Organization organized and facilitated an annual motorcycling enthusiast event, which was advertised as the EVENT (the Event), at the CO-3 in City, State from October 24, 20XX through October 26, 20XX. The EVENT was hosted by the Organization to promote the DIR-2 and products in particular.

The Event featured participation from DIR-1s in Southern State and other CO-13 product vendors to promote their products. CO-13 product vendors varied and included vendors that sold items ranging from motorcycle accessories to leather apparel.

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Tickets, available through the Ticketmaster Office, were sold to the general public and prices ranged from \$ on the first day of the Event to \$ on the last day of the Event based on the quality and type of entertainment offered.

Per the EVENT promotional flyer, the Event was described as "an amazing, action packed three day event that you don't want to miss". each day of the trade show included the following entertainment activities:

- Custom bike show
- Stunt shows
- Wall of death DIR-1 road tour
- Free demo rides
- The world's best biker vendor village

In addition to the entertainment activities above, which were performed daily, the following entertainment activities were performed on each of their respective dates. Additional quotes were included below from the promotional flyers to demonstrate the Event's entertainment focus.

*Friday October 24, 20XX – Ticket Price \$:*

- CO-4
- CO-5
- CO-6

*Saturday October 25, 20XX – Ticket Price \$:*

- CO-7
- CO-8

*Sunday October 25, 20XX – Ticket Price \$:*

- CO-9
- CO-10
- CO-11

The following information was obtained from the Promotional Flyers:

- *Rock the night away with CO-4 & CO-5*
- *CO-7 roars back to the CO-3 in classic biking style*
- *More than 115 riders will compete in multiple heats across three different and exciting classes*
- *See all the factory teams & top pros compete on the 5/8 mile cushion oval*
- *Marvel at the hottest rides out there and the most intricate body art in the State area all in one place!*

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The annual trade show / entertainment event did not include an annual membership meeting. Per interview, other vendors, such as the CO-12 brand, paid to sponsor the Event to promote their wares.

Total receipts generated by the Event, including ticket sales, vendor booth sales, and sponsorship sales, represented greater than 72% of the total revenue of the Organization in 20XX. Paid in capital by two directors represented the remaining 28% of total revenue of the Organization. There were no other sources of revenue. The expenses of the Event represented greater than 92% of the Organization's total expenditures. The Organization's primary purpose was to host the Event. The Organization did not spend funds on any other specific events or activities.

## 2. Promoter Relationship

The Organization (referred to as "Owner" in the agreement) entered into a Marketing Services and Promotion Agreement with CO-1, and CO-2 (referred to as "Agency" in the agreement) on August 6, 20XX to produce and promote the Event. Clause [2.3] – Profit Participation of the agreement provides:

*In addition to the Fees and Expenses set forth in section 2.1 above, Owner shall pay Agency a percentage of the Net Profit of the Properties earned in each calendar year in which Agency renders Services (Profit Participation)...Profit Participation shall be paid to Agency in each year according to the following schedule:*

Revenue from EVENT	Profit Participation
Net Profit less than \$	
Net Profit between \$ and \$\$	
Net Profit of \$\$ and above	

## Promotional Materials

The flyer for the Event contained the phrase "DIR-1" and "DIR-2" was bolded in red font. Promotional materials advertise the Event as a public event to raise funds for charity and stress the event's entertainment options over the three day event.

## LAW:

*Internal Revenue Code (IRC) § 501(c)(6)* provides for the exemption from Federal income tax of business leagues, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

*IRC § 501(c)(6)* qualifying organizations consist of "Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual".

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§ 1.501(c)(6)-1 of *Treasury Regulation* describes a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self sustaining, is not a business league.

Rev. Rul. 58-224 provides that an organization which operates a trade show as its sole or principal activity primarily for the purpose of rendering particular services to individual persons is not entitled to exemption from Federal income tax as an organization described as a business league in *IRC* § 501(c)(6).

Rev. Rul. 67-77 provides that an organization composed of dealers in a certain make of automobile in a designated area is organized and operated for the primary purpose of financing general advertising campaigns to promote, with funds contributed by dealer members, the sale of that make of automobile. Held, the organization is performing particular services for its members and is not entitled to exemption from Federal income tax as a business league under *IRC* § 501(c)(6).

#### **TAXPAYER'S POSITION:**

The Organization disagreed with the proposed revocation and filed a formal protest on October 28, 20XX. Parts of the Organization's comments are reproduced under this section.

The Formal Protest, on page 1, stated *"The taxpayer's position is not complicated:*

- A. It was issued a determination letter as to its tax-exempt status*
- B. It disclosed its form of operation, and relied on the IRS' determination that acting as disclosed would qualify for the exemption.*
- C. It has in fact acted consistent with its disclosure and the IRS determination*
- D. The IRS cannot retroactively decide that its agents acted in error in granting tax exempt status"*

The Formal Protest, on page 1, stated *"The IRS seizes on irrelevancies in reaching its new determination. With respect to the organizational test, as a legal matter, the corporation has no members. The regulations do not require it to have member. On the other hand, it does not have organizations who appoint directors and who make contributions to it, which enable it to have an association of persons with a common business interest, which not itself operating a business for profit."*

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The Formal Protest, on page 1, stated *"With respect to the operational test, the IRS is impressed that the activities of the corporation center on the one event, EVENT. Again, this was no surprise. The corporation disclosed those activities in its application. That the general public finds the activities interesting, and that some of the general public is there for enjoyment and not to participate in a business league, is irrelevant."*

The Formal Protest, on page 2, stated *"While not conceding the IRS position, the corporation has gotten the message that the IRS is uncomfortable with these activities. The corporation is willing to agree to consent to revocation of its tax exemption effective January 1, 20XX."*

The Formal Protest, on page 2, stated *"There is nothing to be gained by requiring all of the information previously provided in tax exempt tax returns to be reformulated and provided in for-profit returns. As a practical matter, there are no funds to pay for these activities."*

#### **GOVERNMENT'S POSITION:**

In order for an organization to retain its exempt status, it must demonstrate to the Service that it is both organized and operated prescribed in the Regulations. The facts stated above indicate that the Organization does not meet the both requirements.

The Organization is not organized properly because its Articles of Incorporation, remain in effect, states that the Organization has no membership. The Organization is not organized appropriately as defined in § 1.501(c)(6)-1 of the Regulation. It describes a business league is *an association of persons having a common business interest...and not to engage in a regular business of a kind ordinarily carried on for profit.*

The Organization fails the operational test because it primarily engaged in activities via the Event that do not further an exempt purpose per IRC § 501(c)(6). The Organization has no revenue from public contribution or membership dues. In addition to the revenue generated from the Event, a substantial amount of operating funds of the Organization was from its two Directors. The Organization is managed and financed by its Directors in a method similar to a for profit corporation. Furthermore, the profit participation arrangement between the Organization and its marketing firms provided additional evidence that the Organization is operated in a manner similar to a for profit company.

It is shown that the sole activity of the Organization is conducting the Event. The Event was primarily entertainment in nature. Entertainment serves as inducements for general public to attend the show. Receipts are derived from sponsorship, fees charged to vendors and dealers for exhibit space, and from the sale of tickets. Expenditures are made for advertising, entertainment, promotions, rents for the space

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of exhibits, insurance, management and other operating expenses. The Event featured participation of CO-13 product vendors to promote their products. CO-13 product vendors varied and included vendors that sold items ranging from motorcycle accessories to leather apparel. The vendors display and sell their wares to the public. The Event is organized and operated for the interests of individuals to promote their products and sales. As illustrated in Rev. Rul. 58-224, an organization, which operates an event as its sole or principal activity primarily for the purpose of rendering particular services to individual persons, is not entitled to exemption from Federal income tax as an organization described as a business league in *IRC § 501(c)(6)*.

Per the flyer and agreement with promoters, the promoters only promote the brand (e.g., DIR-1) and create brand loyalty. No other motorcycle brands were detailed in the promotional materials. The Organization, instead of engaging in activities for the improvement of business conditions in the motorcycle industry as a whole, is performing services for its dealers by advertising the make of motorcycle sold by its dealers. Held in Rev. Rul. 67-77, an organization is performing particular services for its members and is not entitled to exemption from Federal income tax as a business league under *IRC § 501(c)(6)*.

#### **CONCLUSION:**

The Organization is not organized and operated exclusively for one or more exempt purposes under *IRC § 501(c)(6)*, its Federal tax exempt status under such section is revoked effective on January 1, 20XX. The Organization is required to file Form 1120, *U.S. Corporation Income Tax Return*, for the tax year ending December 31, 20XX and all years there after.

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Form **886-A**(Rev.4-68)

Department of the Treasury - Internal Revenue Service

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